

**REMARKS**

- Claims **2-5, 7, 8, 12-21 and 24-53** are currently pending;
- Claims **2-5, 7, 8, 12-21 and 24-53** have been rejected;
- Of the pending claims, claims **2-5, 7, 8, and 30-32** are independent;
- Claims **2-5, 7, 8, 12-21 and 24-53** are in condition for allowance.

1. Rejections Generally

Applicants note that all of claims **2-5, 7, 8, 12-13, 15-21 and 24-53** are rejected under 35 U.S.C. §103. However, for all of the above claims, the Examiner proceeds to assert that all of the claimed elements are taught by Weiss without reference to any other art or teaching as, for instance, would be appropriate were the claims to be rejected under 35 U.S.C. §102. As a result, the Examiner has failed to establish a *prima facie* case of obviousness for any of claims **2-5, 7, 8, 12-13, 15-21 and 24-53**. For the sole purpose of expediting prosecution, Applicants proceed under the assumption that the rejection of claims **2-5, 7, 8, 12-13, 15-21 and 24-53** are, in fact, rejections under 35 U.S.C. §102. Applicants further request from the Examiner either a clarification of the grounds of rejection for the above noted claims or, alternatively, a rejection of the claims under 35 U.S.C. §103 that establishes a *prima facie* case of obviousness.

2. Claim Rejections—Section 103

Claims **2-5, 7, 8, 12-21 and 24-53** stand rejected under 35 U.S.C. §103(a) as being unpatentable over Weiss (US 6,165,071).

## 2.1 Independent Claims 2-5, 7, 8, 30 and 31

Applicants respectfully reassert that independent claims **2-5, 7, 8 and 30-32** recite numerous limitations that are not taught or suggested by Weiss. Specifically, Weiss neither teaches nor suggests the following elements of independent claims **2-5, 7, 8, 30 and 31**:

- *determining a rank for each of a plurality of gaming sessions comprising a first gaming session and at least one other gaming session.*

The Examiner asserted that Weiss teaches “a method comprising determining a first gaming session and determining a rank of the first gaming session (3: 44-52), determining at least one other gaming session (4:29-33). Weiss teaches of ranking the player based on other players in analogous games, thus a second session with corresponding data is one where a second player is ranked and their ranking is not higher then [sic] the rank of the first gaming session meeting the limitation of claim 1. Further, Weiss teaches of determining at least one bonus based on the data and applying the bonus to the first gaming session (4: 21-30). Also, regarding claims 2 and 3, Weiss teaches of determining the rank of the first gaming session by determining the number of prior gaming sessions that are not concluded (2: 40-53). Thus, based on the number of gaming sessions that the player is playing, a rank is determined. This also includes subsequent gaming sessions since the player can be playing games at the same time.” (Final Office Action, page 3).

It is well settled that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). As noted above, Applicants are proceeding under the assumption that all of claims **2-5, 7, 8, 30 and 31** are, in fact, rejected as being anticipated by Weiss.

As noted above, all of claims **2-5, 7, 8, 30 and 31** recite *determining a rank for a first **gaming session** and at least one other **gaming session***. Applicants respectfully assert that Weiss nowhere teaches these elements.

Applicants note that the Examiner asserts that Weiss teaches “determining a **rank of the first gaming session** (3: 44-52)” and “determining at least one other **gaming session** having a rank” and, alternatively, that “Weiss teaches of **ranking the player** based on other players in analogous games”. (emphasis added). This mixing and matching of ranked “gaming sessions” with ranked “players” reaches its apogee when the Examiner asserts that Weiss teaches “a **second player is ranked** and their ranking is not higher then [sic] the **rank of the first gaming session** meeting the limitation of claim 1”. (emphasis added). As claim 1 was previously cancelled, Applicants respectfully proceed under the assumption that the reference to “claim 1” is mere error on behalf of the Examiner.

With specific reference to the Examiner’s citations, Weiss teaches at col. 3, lines 44-52:

In its essence, the invention includes a machine 10 that includes an input output device 6 for reception of a player memory card 20 that the machine 10 can read and write to. The invention

may also include a separate stand alone station 110 where the player can take the player memory card 20 for a status **diagnostic including the relative ranking of the player during the course of play or at the end of the set period** for play including an opportunity to redeem awards associated with player performance.

Further, at the Examiner's citation to col. 4, lines 29-33, Weiss teaches:

The display 120 provides the player with an update with respect to the progress the player is currently enjoying in the game associated with the player memory card 20 and can include **ranking of the player vis a vis other people** similarly competing in analogous games.

Applicants note that, with the exception of a cursory recitation of the above cited matter in the "OBJECTS OF THE INVENTION" section of Weiss, Weiss makes no other mention (in addition to the above cited passages) of any ranking of anything. Therefore, focusing on these two passages, it is evident that, contrary to the Examiner's assertions, Weiss does not teach or otherwise suggest the elements of claim 2.

First, Weiss nowhere mentions ranking a gaming session as recited in claim 2. To the extent that Weiss teaches the ranking of anything, it is the ranking of a player, not a gaming session. As noted above, the Examiner inconsistently and interchangeably asserts that Weiss teaches both ranking a gaming session and ranking a player. Applicants therefore emphatically assert that Weiss does not teach ranking a gaming session. As all of independent claims **2-5, 7, 8, and 31** recite *determining a rank for each of a plurality of gaming sessions*, for this reason alone, claims **2-5, 7, 8, and 31** are in condition for allowance.

Second, all of claims **2, 3, 4, 5 and 8** have been amended to make more clear the method by the which the ranking of each one of a plurality of gaming sessions is determined. No new matter has been added. With specific reference to both of claims **2 and 3**, there is recited “*determining for each of the plurality of gaming sessions a number of prior gaming sessions that are not concluded*” and “*determining for each of the plurality of gaming sessions a number of subsequent gaming sessions that are not concluded*” respectively. In either instance, there is determined for each gaming session a number of other gaming sessions, either previous or subsequent to the gaming session, that have **not yet concluded**.

Applicants respectfully assert that the Examiner is in error when asserting that Weiss teaches “determining the rank of the first gaming session by determining the number of prior gaming sessions that are not concluded (2: 40-53)”. As noted above, contrary to the Examiner’s assertion, Weiss does not teach, at the Examiner’s citation or elsewhere, ranking a gaming session. In addition, Applicants assert that Weiss nowhere teaches determining a number of gaming sessions that are not concluded. In fact, at col. 2, lines 28-30 and again at col. 2, lines 39-42, Weiss teaches “The player memory card provides an up to the minute encapsulation of the player's status during the course of play and is updated **at the end of each playing session**” and “A primary object of the present invention is to provide a new, novel and useful method and apparatus for allowing protracted play of one or more similar gaming machines **over a series of sessions**”, respectively. (emphasis added). As is evident, Weiss teaches ranking a player and updating the player’s status **at the end of each playing session**, presumably, once the gaming session has concluded. There is nowhere taught or suggested determining a gaming session that has not

concluded, let alone determining a number of such gaming sessions, let alone determining a number of such gaming sessions that are either prior or subsequent to the gaming session as claimed.

With further reference to claims **2 and 3**, both claims recite *determining the rank of each of the plurality of gaming sessions based on the number [of prior or subsequent gaming sessions]*. As noted above, Weiss nowhere teaches determining the rank of a gaming session, let alone determining such a ranking based upon a number of prior or subsequent gaming sessions. For all of these additional reasons, claims **2 and 3** are in condition for allowance.

Applicants note that the Examiner further addressed the rejections of claims **2 and 3** in the “Response to Arguments” section. Specifically, the Examiner asserted that Weiss discloses “a memory card that stores updates with respect to the progress of the player during the course of a series of plays defining the player’s participation. The progress of the player is interpreted as including the prior gaming sessions that were not concluded. (Final Office Action, pgs. 6-7).

Applicants respectfully assert that, in fact, as discussed above, Weiss nowhere mentions, teaches, or otherwise suggests any determination of any gaming sessions that are not concluded.

With specific reference to claim **4**, there is recited *determining for each of the plurality of gaming sessions a start time and determining the rank of each of the plurality of gaming sessions based on the start time*. Similarly, claim **5** recites *determining for each of the plurality of gaming sessions a duration and determining the rank of each of the plurality of gaming sessions based on the duration*. Likewise, claim **8** recites

*determining for each of the plurality of gaming sessions a rate of play and determining the rank of each of the plurality of gaming sessions based on the rate of play.* As noted above, Weiss nowhere teaches determining the rank of a gaming session, let alone determining such a ranking based upon a start time, a duration, or a rate of play. For these additional reasons, claims **4, 5 and 8** are in condition for allowance.

As all of claims **12-21** depend upon claim **8**, they are likewise in condition for allowance. However, Applicants make note of the following erroneous assertions with regards to the following specific claims. With regards to claims **12, 13 and 21**, the Examiner asserted that “Weiss teaches of comparing the ranking with other players competing in analogous games. Thus, all of the determinations of **rankings** as discussed above **apply to a second gaming session** with a second player in the same way.” (Final Office Action, pg. 3). (emphasis added). With regards to claims **19 and 20**, the Examiner asserted that “Weiss teaches of displaying the **ranking of a second gaming session** to the player of the first gaming session ...”. (Final Office Action, pg. 4). (emphasis added). Applicants respectfully assert that the Examiner is in error in all such instances where it is asserted that Weiss teaches or otherwise suggests a rank of a gaming session. As noted above, Weiss nowhere teaches the ranking of any entity other than a player. For these additional reasons, claims **12, 13, 19, 20 and 21** are in condition for allowance.

With specific reference to claim **7**, the Examiner asserted “Weiss teaches of offering an amount of funds in the form of a prize to a player based on their rank (4:22-37).” Applicants respectfully assert that,

assuming that the Examiner is correct in characterizing the teachings of Weiss, Weiss does not teach or suggest the elements of claim 7.

Specifically, Applicants note that claim 7 recites *providing an offer to assign the rank to the first gaming session in exchange for an amount of funds*. Applicants allow that Weiss teaches, at the Examiner's citation, awarding a prize to a player. However, Weiss nowhere teaches a rank of a gaming session, let alone providing an offer to assign such a rank, let alone assigning such a rank in exchange for an amount of funds. Assuming, arguendo, that the Examiner is correct when asserting that Weiss teaches an offer in the form of a prize to a player, such is not an assertion of an offer to assign a rank. For this additional reason, claim 7 is in condition for allowance.

## 2.2 Independent Claim 32

Applicants respectfully reassert that independent claim 32 recites numerous limitations that are not taught or suggested by Weiss. Specifically, Weiss neither teaches nor suggests the following elements of independent claim 32:

- *determining a rank of the first gaming session based on at least one of the following; and*
- *determining at least one other gaming session, each at least one other gaming session having a respective rank that is different than the rank of the first gaming session.*



The Examiner asserted that “Regarding claim 32, newly added limitations are addressed below. The remaining limitations have been discussed in detail with respect to at least claims 2-5, 7, 8 ... Weiss teaches of determining a rank of the first gaming session based on a measure of wagering in the first gaming session ... Consequently, claim 32 and claims depending directly or indirectly therefrom are rejected.” (Final Office Action, pg. 5)

Applicants respectfully assert that the Examiner is in error when characterizing the teachings of Weiss. Specifically, as discussed in detail above, Weiss nowhere teaches determining a rank of any gaming session, but, rather, teaches ranking a player. For this reason alone, claim **32** is in condition for allowance. In addition, as all of claims **33-47** depend upon claim 32, they are likewise in condition for allowance.

With specific reference to claims **33-47**, the Examiner stated that “The claimed limitations are all various features of a display, especially in gaming devices. For example, in claim 37, ‘displaying information about respective players for the plurality of gaming sessions.’ In claim 42, ‘displaying the information when at least a portion of the information changes.’ In claim 47, ‘displaying comprises determining a player preference for what types of information are displayed.’ These features are quite simply inherent to a gaming machine display”. (Final Office Action, pg. 5).

Applicants note that it is well settled that “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464.

As is evident, the Examiner has failed to provide the required basis in fact and/or technical reasoning. Rather, the Examiner has sought to establish by fiat the inherency of the claimed elements as evidenced by the assertion that “These features are quite simply inherent to a gaming machine display”. As a result, the Examiner has failed to establish a prima facie case for the rejection of all of claims **33-47**. For this additional reason, all of claims **33-47** are in condition for allowance.

With regards to claims **48-53**, the Examiner asserted that “the claimed limitations have been discussed in detail with respect to the rejections of claims 2-5, 7, 8, 30, 31 ... Consequently, claims 48-53 are rejected.” Applicants note that all of claims **48-53** depend upon allowable claim **32** and therefore incorporate all of the limitations of claim **32**. For this reason alone, all of claims **33-47** are in condition for allowance.

3. Interview

Applicants wish to extend gratitude to Examiners Pezzuto and Deodhar for the kindness of an interview granted on May 7, 2007. During the interview, the amendments presented herein were discussed and agreement was reached that the proposed amendments overcome the Weiss reference.

### Conclusion

For the foregoing reasons it is submitted that all of claims **2-5, 7, 8, 12-21 and 24-53** are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Jeffrey Ambroziak at telephone number (203) 461-7317 or via electronic mail at [jambroziak@walkerdigital.com](mailto:jambroziak@walkerdigital.com).

Applicants are filing this response within the three month statutory time for reply and therefore do not believe any fees are due. If any additional fees should be necessary for the present Application at this time (or any time during the prosecution of the present Application), please charge any such required fee to our Deposit Account No. 50-0271. Please credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

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Date

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